

Martial (1969 Revised) and Article 46 of the Uniform Code of Military Justice. Cognizant legal counsel shall be consulted on the availability and use of judicial subpoenas.

(b) *Formal written request.* (1) A law enforcement office may issue a formal written request for financial records when the records sought are relevant to a legitimate law enforcement inquiry. This request may be issued only if the customer has declined to consent, § 275.8, to the disclosure of his or her records, or if it is determined that to seek consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) A formal written request shall be in a format set forth in enclosure 3 and shall:

(i) State that the request is issued under the Right to Financial Privacy Act of 1978 and the Component's implementation of this part.

(ii) Describe the specific records to be examined.

(iii) State that access is sought in connection with a legitimate law enforcement inquiry.

(iv) Describe the nature of the inquiry.

(v) Be signed by the head of the law enforcement office or a designee.

(3) When a formal written request is issued to a financial institution, a copy of the request shall, at the same time or before, be personally served upon, or mailed to the customer's last known address unless a delay of customer notice has been obtained under § 275.12. The notice to the customer shall be in a format similar to enclosure 3 and shall be personally served at least 14 days or mailed at least 18 days prior to the date on which access is sought.

(4) The official who signs the customer notice shall be designated to receive any challenge from the customer.

(5) The customer shall have 14 days to challenge a notice request when personal service is made and 18 days when service is by mail.

(6) Components shall establish procedures to ensure that no access to financial records is attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the ad-

judication, prescribed by 12 U.S.C. 3410, of any challenge made.

(7) When a customer fails to file a challenge to access to financial records within the pertinent above time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. 3401 et seq. No access to any financial records shall be made before such certification is given.

(c) *Certification.* Prior to obtaining the requested records under § 275.9 (a)(2) and (a)(3), a certification of compliance with 12 U.S.C. 3401 et seq. and Enclosure 4 of this part, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(d) *Annual report.* The annual reporting requirements of § 275.14 shall apply to access procedures under paragraph (a) and (b) of this section.

[45 FR 17576, Mar. 19, 1980, as amended at 48 FR 20228, May 5, 1983. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.10 Requests for financial records in connection with foreign intelligence and foreign counterintelligence activities.

(a) Except as specified in paragraph (b) of this section, nothing in this part shall apply to requests for financial records in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in E.O. 12036, January 24, 1978.

(b) When a request for financial records is made under paragraph (a) of this section, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence and foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of 12 U.S.C. 3401 et seq. Such certification, in a format similar to enclosure 4 of this part, shall be made before obtaining any records.

Office of the Secretary of Defense

§ 275.12

(c) A Component requesting financial records under paragraph (a) of this section, may notify the financial institution from which records are sought that section 3414(3) of 12 U.S.C., prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(d) The annual reporting requirements of § 275.14 shall apply to any request for access under paragraph (a) of this section.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.11 Emergency access procedures.

(a) Except as provided in paragraph (b) and (c) of this section, nothing in this part shall apply to a request for financial records from a financial institution when the law enforcement office making such request determines that a delay in obtaining access to such records would create an imminent danger of:

- (1) Physical injury to any person.
- (2) Serious property damage.
- (3) Flight to avoid prosecution.

(b) When access is made to financial records under paragraph (a) of this section, Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

(1) Certify in writing, in a format set forth in Enclosure 4 of this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. 3401 et seq., as a prerequisite to obtaining access.

(2) Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

(c) After filing of the signed sworn statement required by paragraph (b)(2) of this section, the Component that has obtained access to financial records under paragraph (a) of this section, shall personally serve or mail to the customer a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained under § 275.12.

Records concerning your transactions held by the financial institution named in the attached request were obtained by [agency or department] under the Right to Financial

Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds].

Mailings under this paragraph shall be by certified or registered mail to the last known address of the customer.

(d) The annual reporting requirements of § 275.14 shall apply to any access pursuant to paragraph (a) of this section.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

§ 275.12 Procedures for delay of notice.

(a) The customer notice required by § 275.9(b)(3), § 275.11(c), or § 275.13(c) may be delayed for successive periods of 90 days. The notice required by paragraph (a)(2)(ii) of this section may be delayed for one period of 180 days and successive periods of 90 days. A delay of notice may only be granted by a court of competent jurisdiction and only when not serving the notice would result in:

- (1) Endangering the life or physical safety of any person.
- (2) Flight from prosecution.
- (3) Destruction of or tampering with evidence.
- (4) Intimidation of potential witnesses.

(5) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same degree as the circumstances in paragraphs (a)(1) through (4) of this section.

(b) When a delay of notice is appropriate, legal counsel shall be consulted to obtain such a delay. Application for delays of notice shall be made with reasonable specificity.

(c) Upon the expiration of a delay obtained under paragraph (a) of this section, of a notice required by:

(1) Section 275.9(a)(2)(ii), the law enforcement office obtaining such records shall mail to the customer a copy of the search warrant and the following notice:

Records or information concerning your transactions held by the financial institution named in the attached search warrant